



COMMUNITY DEVELOPMENT DEPARTMENT

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PLANNING COMMISSION MEETING MINUTES

REGULAR MEETING

NOVEMBER 8, 2005

PRESENT: Acevedo, Koepp-Baker, Escobar, Lyle, Mueller

ABSENT: Benich

LATE: Davenport, who arrived and was seated at 7:05 p.m.

STAFF: Director of Business Assistance and Housing Services (DBAHS) Toy, Attorney Sloan (Special Counsel for this project), Planning Manager (PM) Rowe, Senior Planner (SP) Tolentino, Public Works (DDPW) Bjarke, Senior Civil Engineer (SCE) Creer and Minutes Clerk Johnson

Chair Lyle called the meeting to order at 7:01 p.m., and led the flag salute.

DECLARATION OF POSTING OF AGENDA

Minutes Clerk Johnson certified that the meeting's agenda was duly noticed and posted in accordance with Government Code Section 54954.2.

OPPORTUNITY FOR PUBLIC COMMENT

Chair Lyle presented the opportunity for public comment.

With no one members of the audience indicating a wish to address matters not on the agenda, the time for public comment was closed.

MINUTES:

OCTOBER 11 and 13, 2005 **COMMISSIONERS MUELLER/ESCOBAR MOTIONED TO APPROVE THE OCTOBER 11 AND 13, 2005 MINUTES WITH THE FOLLOWING CORRECTIONS:**

Page 3, paragraph 5: recalling that the ~~other site~~ *City* had provided

Pages 4 & 5: ~~AP~~ *SP* Tolentino

Page 8 paragraph 5 line 11: ...criticizing ~~members~~ *a member* of the Commission

Page 13 paragraph 8: (delete) ~~getting into Christmas bad~~

Page 18, paragraph 1, 2nd line: use of ~~existing~~ *existing* wells

Page 20, paragraph 4 (deletions):commitment ~~was~~ to provide security, ~~including a commitment to respect of public safety officers.~~

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THE MOTION CARRIED BY THE FOLLOWING VOTE: AYES: ACEVEDO, DAVENPORT, ESCOBAR, LYLE, MUELLER; NOES: NONE; ABSTAIN: NONE; ABSENT: BENICH.

OCTOBER 25, 2005 COMMISSIONERS MUELLER/ESCOBAR MOTIONED TO APPROVE THE OCTOBER 25, 2005 MINUTES WITH THE FOLLOWING CORRECTIONS:

Page 3, paragraph 2:but has been changed to ~~September 30, with September 15 for the BMRs~~ *moved 9 months earlier to September 30 for at least one-half of the housing units, and to September 15 for the current and future "C" competitions.*

Page 3, paragraph 4, bullet 4: (allotments will be given out three – four months *earlier than in the past*)

Page 8, paragraph 3 line 3: ,,,,already approved *or likely to be approved* homes

Page 8, paragraph 7: Chair Lyle announced he had received two letters and two e-mails, *some of* which did not appear to have been copied to the other Commissioners. ~~nor did he do so~~ *He did not copy Commissioners on his responses* due to the provisions of the Brown Act.

Page 14, paragraph 2, lines 6 -11: CONTINUED USE ITEM 2) [IN-GROUND WELL ISSUE] TO SAY: 'AS LONG AS SUCH FACILITIES ARE ~~NOT CONNECTED TO CITY WATER SYSTEM AND FURTHER THAT THE FACILITIES ARE~~ APPROVED BY THE SANTA CLARA COUNTY VALLEY WATER DISTRICT, *THE WELLS MAY BE USED FOR SITE IRRIGATION*, AND ADDING SECTIONS E

Page 14, paragraph 3: (add bullet) *at least 12 pages in the FEIR have responses that are at least partially incorrect or do not fully address all aspects of a question being raised against the EIR.*

Page 14, paragraph 3: ~~traffic conditions provide no indication of 2006-07-08-09 allotment considerations~~ the traffic analysis did not include any of the housing units to be allocated in 2006, 2007, 2008, and 2009

THE MOTION CARRIED BY THE FOLLOWING VOTE: AYES: ACEVEDO, DAVENPORT, ESCOBAR, KOEPP-BAKER, LYLE, MUELLER; NOES: NONE; ABSTAIN: NONE; ABSENT: BENICH.

PUBLIC
HEARING:

**1) ZAA-98-01:
E. DUNNE-SHAW**

The applicant is requesting an amendment to an approved PUD to allow for a shared monument sign to be located on the southeast corner of the intersection of E. Dunne Ave. and San Benancio Way.

PM Rowe presented the staff report with a brief overview of the request before announcing that the applicant has asked for a continuation to the November 29, 2005 Planning Commission meeting.

Chair Lyle opened the public hearing.

For the benefit of the audience, Chair Lyle explained the issues of signage being requested.

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With no persons present to address the matter, the public hearing was closed.

COMMISSIONERS ACEVEDO/ESCOBAR MOTIONED TO CONTINUE THE MATTER OF ZAA-98-01: E. DUNNE-SHAW TO THE NOVEMBER 29, 2005 PLANNING COMMISSION MEETING. THE MOTION PASSED WITH THE UNANIMOUS AFFIRMATIVE VOTE OF ALL COMMISSIONERS PRESENT; BENICH WAS ABSENT.

**2) ZA-04-12/
SD-05-05/**

**DA-05-11/UP-05-11:
COCHRANE-
DINAPOLI/
BROWMAN**

A request for approval of a planned unit development, tentative map, development agreement and use permit for a 657,250-sf sub-regional commercial shopping center. The project site is 66.49 acres and is located at the northeast quadrant of Cochrane Rd and Hwy 101 in a Planned Unit Development/Highway Commercial (PUD/HC) Zoning District.

SP Tolentino presented the staff report, advising that at this meeting there were four items to be considered, with discussion:

- Zoning for the PUD
- Vesting Tentative Map
- Conditional Use Permit (CUP)
- Development Agreement

SP Tolentino enumerated the PUD guidelines which had been 'redone' at the Commissioners direction:

Clarification of the numbers of drive-through fast-food establishments: any fast food eateries beyond two of the five permitted must obtain a CUP

Lighting standards permitted will be 15-feet in height along Mission View and Cochrane and 33-feet elsewhere throughout the Center [it was noted that the applicants will request a variation to the light standards of the City]

A definition of 'fast food' had been determined

Requirement of a CUP for the gas station/convenience market/carwash; placement determination will be made by the ARB

SP Tolentino explained that regarding the use permit approval, staff recommends 5-years, but the applicants are asking for 15-years for the life of the development agreement.

As to the Subdivision (Vesting Tentative Map) for the requested 66 acres, 36 parcels are proposed to be created. The project will be constructed in two phases, SP Tolentino said. The total off site improvements along Cochrane Road would be completed during phase 1, as well as Target and an additional 226,200 sf of development (totaling 350,000 sf in phase 1). During phase two, residents will see the remainder of the development.

The Development Agreement would be presented by DBAHS Toy, SP Tolentino explained.

SP Tolentino called attention to recommended changes to the prepared resolutions:

- Resolution No. 05- 61, page 6: (Zoning) under **ALLOWABLE USES** staff recommends replacing the word 'reflects' with 'includes all of ' in the definition of drive-thru fast food, as this is reflective of the Note 2: myriad of requirements covering the various aspects of a 'drive-thru';

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- Resolution No. 05-62: Subdivision Agreement (standard checklist) page 7, item G is checked and has been clarified. Attorney Sloan explained the developer must sign the Development Agreement before it goes to the City Council; and
- Page 22, Condition XXIII 1[add]: and an owner's association is formed.

DBAHS Toy advised the Commissioners of the Development Agreement matrix which detailed how the development agreement came into being and the City's involvement with the project. DBAHS Toy told of the benefits to the City: \$2.5 million per year in sales and property tax with 65% of the estimated revenue to be 'net new' revenue. DBAHS Toy said that over the 11 years estimated for construction, the City will receive about \$1.6 million annually in 'net new revenue'.

Chair Lyle questioned the figures presented, saying, "I've heard three different numbers about the projected revenue in two days." DBAHS Toy explained how his Department, working with the Finance Department, had arrived at the numbers he had just presented. DBAHS Toy talked about 'sales tax leakage' and told the Commissioners that the Consultant who did the financial analysis had arrived at the conclusion which he portrayed in his message. DBAHS Toy said the City would be obligated to help with a 'significant amount of public infrastructure, as the City would plan to fund the impact fees. DBAHS Toy went on to say the Development Agreement has been drawn up to reflect the wish of the applicant for a 15-year construction projection. DBAHS Toy reiterated what SP Tolentino had spoken of: Phase 1 of the project would produce 350,000 sf., with phase 2 adding 310,000 sf. DBAHS Toy also covered:

- Conditions of approval
- Phasing schedule
- Fee waiver/reimbursement (Exhibit F)
- Additional fee reimbursement/waiver

Commissioners discussed with DBAHS Toy the information he had presented, including:

- Need to review the proposed overall limit of \$11.5 over 15 year period from the City [DBAHS Toy to review]
- Grocery store schedule
- Eligibility of the developer to apply for subsequent development reimbursement
- Phasing (Exhibit G)
- Explanations of various deadlines
- Documentation of restrictions pledged for Target development (DBAHS Toy said there was not written promise, but 'good faith and good will'; Commissioner Escobar said if Target officials are willing to agree, it should be put in writing; DBAHS Toy indicated thinking the City can get same in writing)

Chair Lyle indicated talks with DBAHS Toy, the Community Development Director, and the City Manager; however his concern remained: the lack of any public meeting where the fee waiver was announced for discussion, so that the public could hear about the waiver. DBAHS Toy explained that the recognized and accepted process had been identified and the concept had been broached in discussion with the applicant. Chair Lyle remarked that the matter had not been discussed in public meeting nor brought to

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the Planning Commission where such knowledge might have affected the vote on the EIR.

Chair Lyle called attention to the fact that with construction for Phase 2, 2/3 of the project would be completed with that phase, but the developer could still get the full \$11.5 million assistance. DBAHS Toy clarified he would need to check, but if the improvements were installed as agreed, that would be the case. He said the \$11.5 million is tied to pulling the permits. Chair Lyle said he was concerned on learning that if the project is only 2/3 done, the developer can get the monies, but the City would not get funds to offset the advance. DBAHS Toy informed he thought the City would get enough in repayment of the impact fees for the offset. Chair Lyle questioned the merit of a \$2.5 million annual tax gain since \$800,000 of it comes from this project taking \$80 million in sales from businesses throughout the rest of the City.

Commissioner Davenport asked about money generated from 100% averaging through years 8 – 15 and saying that with fee waivers the City would probably be looking at between 19 - 20 years not a smaller number.

DBAHS Toy explained that the new revenue of \$1.6 million would be easily offset by the estimated \$10 million in sales tax per year to the City. Discussion ensued regarding the:

- Impact fee (\$11.5 million) for years 1-10 (\$1.8 million maximum during each of the years)
- Discount rate of 3% per year equals about \$950,000 per year

Chair Lyle commented it appears the City will be in a net deficit situation for 10 years and will be borrowing from itself for this project.

Commissioner Mueller talked about debt service and the use of paying off the amounts under consideration for other City services.

Chair Lyle remarked that the Commissioners needed to decide on whether the 15-foot light heights should be restricted to the area along Mission View or also bring the lighting requirement along Cochrane.

Chair Lyle opened the public hearing.

Nickelle Austin, 19252 Donna Court, reminded the Commissioners she had spoken at the October 25, 2005 meeting and had come tonight to express the same concerns. Ms. Austin said, as at the previous meeting, she was speaking on behalf of her father and her grandparents who share her concerns. "This is agriculture land: we have dust, noise, and spraying. We have requested they have a solid wall between our property and the shopping center," Ms. Austin stated. She went on to tell that the Cochrane channel to the west of her property has a 6-foot chain link fence and that is not enough to keep persons and trash away. We wanted a 10-foot fence and that was not granted in the conditions. We are asking 'why not', Ms. Austin asked. She stated that she and her family wants a condition that the applicant must disclose to potential tenants about the agriculture being done on her property.

Darryl Browman, was present to speak to the Commissioners as the representative of the

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applicants. Mr. Browman distributed the requested changes formulated by the applicants, where he referenced the areas of divergence from that of Planning staff.

Specifically addressed were the following issues:

- Free-standing liquor store (Mr. Browman said it would be a large chain-type store.)
- lighting/ photometric study (Mr. Browman described the meeting with the Police Chief to discuss lighting and told Commissioners that the study shows there would not be substantial 'bleed' across the road)
- questions on the development agreement
- potential acceptance of some restrictions on the location for the gas station
- changes in the proposed lighting plan which has eliminated almost 200 poles from the original design (resulting in significant savings in energy of \$120,000 per year if taller poles are approved)
- how the height of the light poles might affect the surrounding neighborhood; Chair Lyle asked about the residential area across the street and to what degree the lights would be visible from second stories of the homes

Responding to statements Commissioner Mueller made about CUPs for the shopping center, Attorney Sloan observed that City staff has worked enormously hard in working with this applicant who is 'very fussy' and still putting new things out even at this meeting. Attorney Sloan said, "Commissioners would be doing staff a big favor if you would let staff respond then you as Commissioners make decisions."

Mr. Browman informed he had gotten the staff report at 8:30 p.m. on Friday night and can respond to those changes now. "We care about everything we do in working with the City," he said.

Commissioner Mueller told the applicant he can understand why the developer would want a gas station while restating the wish to have an 'exit statement' as an essential component if the gas station is put in and the original operator doesn't continue with the business. Mr. Browman said that would be 'OK'. Commissioner Mueller continued by saying that: "We are in an unusual position in that we don't know where the gas station will be located within the center. I would like a 'sunset clause' if when the center is all built out and the gas station goes away, then this entitlement goes away and if entitlement goes away, then the ability to have the gas station is lost." Mr. Browman said he would be 'OK' with that, as well.

Mr. Browman then turned to the changes in the Standard Conditions outlined by SP Tolentino. Mr. Browman raised the following points:

- Target is not party to an OEA and therefore the City would not have 'enforcement rights' consequently proposing to eliminate on page 22, item 1.e (ii) and (iii)
- Page 4, item 6 exhibits (not drawings)
- build out of Mission View north of Cochrane
- installation of traffic signal at Cochrane/Mission View tied with development agreement - in his opinion could be a standard agreement like the cities of Gilroy and Hayward had completed to make big projects like this one work. Mr. Browman spoke of his investment as the landowner of \$80 - \$100 million with the potential for creating a 'very strong revenue stream for the

City of Morgan Hill'

Mr. Browman then presented estimates which he indicated were based on information of the pay off for the City's investment. Chair Lyle said the Commissioners had no idea of how the calculations were arrived as they had not been given specific details.

Mr. Browman said that in year one, 15% of the excess revenues generated should result in about \$11 million per year.

Dick Oliver, 385 Woodview Ave. #100, called attention that the reimbursement agreement within this agenda item was of interest as the actual cost of the intersection improvements appeared to be eligible for reimbursement. Mr. Oliver reminded that Mission Ranch had paid for substantial improvements within the City. Mr. Oliver indicated the City tells the developers who should pay for traffic impacts. Mr. Oliver said his company has more than paid for off-sites which will benefit this development. He told of the improvements and fees he has completed in the area and told the Commissioners he is working on data to document those expenditures.

With no others to speak to the matter, the public hearing was closed.

Chair Lyle requested the Commissioners to verify that the staff report/table 1 reflects what the Commission said at last few meetings.

Commissioner Acevedo reminded that Mrs. Austin asked her questions about the fence height be answered/addressed. Chair Lyle said those concerns were addressable in the PUD guidelines.

Commissioners then engaged in lengthy discussion of the materials presented in the staff report and those presented as highlighted items by the applicant, including:

Resolution No. 05-61

- Section 8 (revise) ...PUD standards would hinder the establishment of an economically and functionally successful sub-regional commercial shopping center
- Section 11 (add) ...zoning amendment application, except that two freeway signs and one monument sign at the corner of Mission View and Cochrane Road are approved as described under Item 46 in the attached Cochrane Road PUD Guidelines.

PUD Guidelines

- Section 2 (revise) Elevations submitted with the PUD application (8/22/05) shall not require further review or approval except that the supporting architectural and design details for such elevations shall require final review and approval by an ARB Subcommittee.
- Item 17 Considerable discussion developed regarding height of lighting along Mission View and Cochrane, and whether to allow taller poles as proposed by the applicant. Commission appreciated concept of taller poles for energy efficiency, but was concerned about potential impact to neighboring residential uses. Ultimately, the Commission was split 3-3 on the matter; therefore, the item was not modified

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- Item 19 (add) ...residentially zoned properties or the approved congregate care and assisted living facilities to the south.
- Item 19 (add)...lighting intensity and direction
- Item 20 (revise) substantially consistent
- Item 22 (revise) ...special markings such as integral color concrete, scored or raised concrete, colored paving, special striping and/or paving stones.
- Item 30 (add) ...metal, concrete, concrete block
- Item 31 (add) ...enter and exit
- Item 45 (revise) ...solid material
- Item 46 (add) ...Cochrane Road consistent with the original PUD application (8/22/05), subject to approval by the SCVWD if necessary.
- Item 46 (add) ...monument sign structure consistent with the original PUD application (8/22/05)
- (add) Section 8: Disclosures
 - 54. A disclosure statement shall be included in all sale or lease agreements informing prospective buyers and tenants of the adjacent agricultural uses.

Chair Lyle opened the public hearing.

The applicant, Mr. Browman, agreed to have this condition added [PUD condition/section 8].

The public hearing was closed.

Regarding the request for a ten foot wall rather than a fence, PM Rowe explained that users of the center's retailers would be buffered from agriculture uses by the 'big box store'.

Other minor changes for clarification were discussed, including: deliveries to the theater site (along Mission View) would be prohibited 10:00 p.m. and 6:00 a.m. to avoid disruption to the neighborhood residents.

COMMISSIONER ACEVEDO OFFERED RESOLUTION NO. 05-61, RECOMMENDING APPROVAL TO ESTABLISH A PLANNED UNIT DEVELOPMENT FOR A 66.49-ACRE SITE LOCATED AT THE NORTHEAST QUADRANT OF COCHRANE ROAD AND HIGHWAY 101, TOGETHER WITH THE FINDINGS AND CONDITIONS CONTAINED THEREIN, AND AS AMENDED BY DISCUSSION WITHIN THE MEETING. COMMISSIONER ESCOBAR PROVIDED THE SECOND TO THE MOTION, WHICH PASSED BY THE FOLLOWING VOTE: AYES: ACEVEDO, DAVENPORT, ESCOBAR, KOEPP-BAKER, LYLE, MUELLER; NOES: NONE; ABSTAIN: NONE; ABSENT: BENICH.

Regarding issues within Resolution No. 05-62, Chair Lyle said it was difficult to have a presentation of just half of the Standard Conditions as ascertaining what the ARB agreed to and what the Planning Commission agreed to was not clearly defined.

Attorney Sloan pointed out that the applicants were requesting changes not necessary

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due to changes already made by Planning Department staff. Commissioners discussed with staff the changes the applicant had asked for in Standard Conditions, page 22, item E with Attorney Sloan stating this represents the standard in all common areas of the City and therefore the City should be able to have oversight. The Commissioners agreed that regarding maintenance of the common space(s), the City should have the right but not the obligation for upkeep. Following that discussion and regarding 1.e: items ii and iii would be retained with 'softened' language. Attorney Sloan advised it is a common requirement for the City to have for projects.

The public hearing was reopened.

Mr. Browman said he respects the City Attorney's opinion, but has never experienced this issue being raised in commercial development. Mr. Browman firmly stated that the Target Corporation would not allow private (City) enforcement of maintenance and suggested such standards were the reason this language was not acceptable

Attorney Sloan called attention that this section of the agreement was in place for the Ford Store development, as well other developments.

Commissioner Acevedo pointed out that Mr. Browman said such language /requirement would be a 'deal killer'.

Chair Lyle indicated the Commission could accept changes recommended by staff then have the 'attorneys work it out'. Commissioner Koepp-Baker agrees this would be the most feasible avenue of action.

Commissioner Davenport noted that in view of the substantial dialogue, it might be better to send forward all the language to the City Council.

Commissioner Acevedo spoke on the issue of this matter being a 'deal killer' for Target and the potential for perusal of the City of Gilroy agreements with Target at that location. *"Why would it be a 'deal killer' for Morgan Hill if that was not the case in Gilroy – if their agreement is different, why not the same for Morgan Hill?" he asked.*

Commissioner Mueller indicated thinking the 'City needs to put pressure on owners to do upkeep' but retaining the language in the Standard Conditions with much finer detail before it goes to the City Council.

Attorney Sloan said she would prefer to have staff put in softer language and indicated in the staff report that the applicant wants to take it all out.

Commissioner Escobar suggested finding 'common ground', saying the City needs to explore language which would be mutually agreeable to both sides rather than striking it all. He urged, "Try to find phrases which will be palatable to both parties."

Mr. Browman persisted that staff should come up with a Condition that the center operators need to maintain the common areas.

The public hearing was closed.

Turning to issues raised about the traffic signal at Cochrane and Mission View: it was indicated that if the center becomes 'really successful, with phase 2 is not being rapidly developed but an identified need for installation of the traffic signal, installation of the signal could be concurrent with phase 2. SE Creer joined the discussion, saying if the Commissioners were looking to determine if the signal was needed before phase 2, the condition was covered by traffic impact fees, so the installation of a traffic signal before phase 2 was realistic.

COMMISSIONER MUELLER OFFERED RESOLUTION NO. 05-62, RECOMMENDING APPROVAL OF A 36-PARCEL VESTING TENTATIVE MAP FOR A 66.49-ACRE SITE LOCATED AT THE NORTHEAST QUADRANT OF COCHRANE ROAD AND HIGHWAY 101, INCLUSIVE OF THE IDENTIFIED MODIFICATIONS AND THE FINDINGS AND CONDITIONS CONTAINED WITHIN. COMMISSIONER ESCOBAR SECONDED THE MOTION, WHICH CARRIED WITH THE FOLLOWING VOTE: AYES: ACEVEDO, DAVENPORT, ESCOBAR, KOEPP-BAKER, LYLE, MUELLER; NOES: NONE; ABSTAIN: NONE; ABSENT: BENICH.

Resolution No. 05-63 was taken up for consideration. Issues discussed were:
Exclusion of corner site at Cochrane and Mission View and along Cochrane frontage
potential gas station locations
exit language for gas station if the original installer leaves, and a new operator is not located, the station would be removed
term / time limits for use permit approval [DBAHS Toy led discussion regarding the difficulty of the proposed timing of the project and reasonableness of years needed for completion; agreement of ten years resulted with agreement of all parties]

Commissioner Mueller turned to concerns of when the CUP had not been decided for the location of the gas station. Following considerable interchange of the matter, PM Rowe advised it would be fitting – if the Commissioners desired - to sunset the CUP (for the gas station) at the end of ten years.

COMMISSIONER MUELLER OFFERED RESOLUTION NO. 05-63, RECOMMENDING APPROVAL OF A CONDITIONAL USE PERMIT FOR A GAS STATION, CONVENIENCE MARKET, AND CARWASH ON A 66.49-ACRE SITE LOCATED AT THE NORTHEAST QUADRANT OF COCHRANE ROAD AND HIGHWAY 101, WITH SECTIONS ADDED PROHIBITING THE CORNER SITE OF COCHRANE AND MISSION VIEW OR ALONG THE COCHRANE ROAD FRONTAGE AS A POTENTIAL LOCATION FOR THE GAS STATION, CONVENIENCE MARKET AND CARWASH, REQUIRING AN EXIT CLAUSE FOR THE GAS STATION, AND MODIFYING THE SUNSET CLAUSE PROVISION TO TEN (10) YEARS AND INCLUSIVE OF THE FINDINGS AND CONDITIONS CONTAINED THEREIN. COMMISSIONER ESCOBAR SECONDED THE MOTION, WHICH PASSED WITH THE FOLLOWING VOTE: AYES: DAVENPORT, ESCOBAR, KOEPP-BAKER, MUELLER; NOES: ACEVEDO, who objected to inclusion of the gas station issues and LYLE, who objected to the ten-years; ABSTAIN: NONE; ABSENT: BENICH.

The development agreement (Resolution No. 05-67) was discussed with DBAHS Toy providing considerable information.

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Terms of Agreement:

- Page 9, item 3.2 [referenced back to 1.4 of the agreement] is for 15 years, but if the infrastructure is completed within 10 years, the monies would be paid out over the next 5 years
- Pages 14 and 17 – no property tax encumbrance [Chair Lyle noted that the funding from the City actually could be more than at first glance]
- Page 15, 5.4.3 Chair Lyle questioned exemptions from State law changes. Attorney Sloan advised that any building permit changes must meet compliance, as well as adherence to the UBC
- Grocery store [page 4, item E (ii) not to exceed \$11.5 and (vi) add: in no event
- Schedule F1, (SDRA) page 2: Chair Lyle noted the reimbursement measures were not clear: property owners should be precluded from ‘double dipping’ if reimbursement is obtained from the City and also from subsequent owners (discussion turned to paragraph b: funding would not be from SDRA, as the City would have already paid the impact fee. DBAHS Toy advised it is a matter of defining ‘what is eligible’. Chair Lyle continued, “If the City believes reimbursement for changes is under SDRA, the City should not pay impact fees since payment was received from that source.”
 - Staff shall specify exactly which properties are involved by listing those
- phasing plan
- appearance of a suggestion that the City prefers grocery stores of larger than 30,000 square feet but the community is looking for an ‘upscale market’ which does not use that amount of space; DBAHS Toy said an extra amount of square footage was planned to permit flexibility. PM Rowe talked about the requirements of the General Plan for a grocery store in this area. DBAHS Toy spoke on specialty retailers not being locked in or out of this center.
- F-2, item 4: DBAHS Toy advised St. Louise had paid for under-grounding. Commissioners discussed the potential for reimbursement of having the work done and the fees paid.

COMMISSIONER MUELLER OFFERED RESOLUTION NO. 05-67, RECOMMENDING APPROVAL OF DEVELOPMENT AGREEMENT APPLICATION, DA-05-11; COCHRANE – DiNAPOLI/BROWMAN. COMMISSIONER ESCOBAR SECONDED THE MOTION.

Chair Lyle said he was troubled that no opportunity for public input had been provided regarding the impact fees and forgiveness of those by the City. “The public should have been given the opportunity to know more of those impact fees and the ramifications. Details behind the forgiving of ~~\$1.5~~ \$11.5 million in impact fees were not made available to the public. Also, we don’t know if additional fees were passed on or exempted.” Chair Lyle stated. He also presented difficulty in accepting the traffic study as not having ‘proper input’, as well as the developer not having to pay for the traffic signal in phase 1.

Commissioner Mueller disagreed, saying he thought the economic development process used here was ‘very standard’. as he reminded that the Commissioners had spent ‘many hours on this’.

Chair Lyle countered that: “Not until Friday late did we have any idea of the subject of the \$11.5 million.” He added this matter would be a ‘good candidate for the upcoming

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ethics discussion’.

Commissioner Mueller spoke on the lack of public input when the car dealership development was being considered. Chair Lyle expressed the thought that the reasons for public input could be considerably different in this event.

THE MOTION CARRIED WITH THE FOLLOWING VOTE: AYES: ACEVEDO, DAVENPORT, ESCOBAR, KOEPP-BAKER, MUELLER; NOES: LYLE, whose objections included: lack of opportunity for public hearing/input on the fee impact schedule/exculpation of \$11.5 million and the traffic study not having proper input(s); ABSTAIN: NONE; ABSENT: BENICH.

Chair Lyle commented on past discussions centered on possible recommendations to the City Council regarding a ballot measure to remove restrictions of a grocery at Cochrane Plaza.

Commissioner Davenport announced he had met with the applicant of the matter just discussed (shopping center at Cochrane/Highway 101), with other Commissioners (except Koepp-Baker) acknowledging similar meetings.

ANNOUNCEMENTS: PM Rowe noted the following:

November 9, 2005, at 7:00 p.m., the Commissioners are requested to participate in the ethics workshop sponsored by the City Council.

The next meeting of the Commission will be November 29, 2005, with the November 22, 2005 meeting having been cancelled.

ADJOURNMENT: Having determined that there was no further business to be considered by the Commissioners at this meeting, Chair Lyle adjourned the meeting at 10:40 p.m.

MINUTES PREPARED BY:

JUDI H. JOHNSON, Minutes Clerk